

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - X

UNITED STATES OF AMERICA, : 10-CR-600 (DLI)
: U.S. Courthouse
: Brooklyn, New York
-against- :
: TRANSCRIPT OF
: VIOLATION OF PROBATION
:
ANDREW TEPFER, : March 26, 2019
: 3:00 p.m.
Defendant. :

- - - - - X

UNITED STATES OF AMERICA, : 18-CR-524(DLI)
:
-against- :
:
ANDREW TEPFER : TRANSCRIPT OF
and MARK WEISSMAN, : STATUS CONFERENCE
:
Defendants. :
:

X-----

BEFORE: HONORABLE DORA L. IRIZARRY, Chief Judge

APPEARANCES:

For the Government: RICHARD DONOGHUE, ESQ.
United States Attorney
271 Cadman Plaza East
Brooklyn, New York 11201
BY: NATHAN REILLY, ESQ.
Assistant U.S. Attorney

1 For the Defendant
2 Tepfer:

DAWN M. CARDI, ESQ.

3 Weissman:

HENRY MAZUREK, ESQ.

4
5 Court Reporter:

Holly Driscoll, CSR, FCRR
Chief Court Reporter
225 Cadman Plaza East
Brooklyn, New York 11201
7 (718) 613-2274

8 Proceedings recorded by mechanical stenography, transcript
9 produced by Computer-Assisted Transcript.

10
11
12 * * *

13
14 THE COURTROOM DEPUTY: Criminal cause for status
15 conference on violation of probation under docket 10-CR-600,
16 United States versus Andrew Tepfer, and criminal cause for
17 status conference, docket number 18-CR-524, United States
18 versus Andrew Tepfer and Mark Weissman.

19 Please state your appearances.

20 MR. REILLY: Good afternoon, Your Honor, Nathan
21 Reilly for the United States.

22 THE COURT: Good afternoon.

23 THE COURTROOM DEPUTY: For Probation.

24 PROBATION OFFICER: Yes, good afternoon, Your Honor,
25 Allison Aucoin.

1 THE COURT: Good afternoon.

2 THE COURTROOM DEPUTY: For Pretrial.

3 PRETRIAL SERVICES OFFICER: Good afternoon, Your
4 Honor, Shavoy Atkinson, Pretrial Services.

5 THE COURT: Good afternoon.

6 Please have a seat.

7 MS. CARDI: Good afternoon, Your Honor, Dawn Cardi
8 for Mr. Andrew Tepfer.

9 THE COURT: Good afternoon.

10 MR. MAZUREK: And good afternoon, Your Honor, Henry
11 Mazurek on behalf of Mark Weissman who is seated to my right.

12 THE COURT: Good afternoon to both of you as well.
13 Again, I'm going to ask everyone to remain seated and speak
14 into the microphone so we can hear each other.

15 So, first, why don't we have a status report on the
16 new case, on 18-CR-524, and then we can address some status
17 reports that I have received in connection with Mr. Tepfer
18 after that.

19 MR. REILLY: Yes, Your Honor. The government has
20 completed discovery in this matter with both defendants and
21 had discussions about a resolution with each of them.

22 Taking them in turn, with respect to Mr. Weissman,
23 Mr. Mazurek and I have been in contact, we have discussed a
24 potential resolution with respect to one charge. The
25 government intends to provide an agreement with respect to

1 that charge to Mr. Mazurek early next week or even later this
2 week and I think we'll have some further discussions about
3 whether any enhancements or other modifications to the
4 guidelines would be applicable. I think we're both of the
5 view, and obviously Mr. Mazurek can speak for himself, that
6 the communications and conversations are fruitful. I also
7 think that we believe that we will know in relatively short
8 order whether Mr. Weissman is prepared to accept the
9 government's offer which will be the only offer the government
10 is extending or, in the alternative, we should set a trial
11 date with the Court.

12 So, we had discussed the possibility, if it is
13 amenable to the Court, of one additional 30-day extension of
14 time so Mr. Mazurek can review the agreement with respect to
15 his client and they can make a determination as to whether or
16 not the matter can be resolved.

17 With respect to Ms. Cardi and Mr. Tepfer, the
18 government discussed the potential of a resolution short of
19 trial with Ms. Cardi. I believe -- I'll allow Ms. Cardi
20 obviously to address the Court more specifically on this
21 issue -- that she intends to make an application to the Court
22 that she thinks may be a necessary precursor to being able to
23 recommend a resolution to her client. So, again, perhaps a
24 30-day extension of time might be sensible so that she could
25 then advise her client appropriately with respect to a plea.

1 Again, I'll allow her to address that potential application.

2 THE COURT: Okay. So, let me start with -- since
3 the government started with Mr. Weissman first, let me start
4 with Mr. Weissman as well.

5 MR. MAZUREK: Yes, Your Honor.

6 THE COURT: So, are you in agreement with the status
7 as represented by the government, Mr. Mazurek?

8 MR. MAZUREK: Yes, Your Honor. The government
9 informed me of a new offer just last week. We've been in
10 discussions since then. I do think considering this new offer
11 is advisable for me and my client and therefore request one
12 final extension. I do think, Your Honor, at that point we're
13 either going to reach an agreement or not and we'll be
14 prepared to set a schedule if we are not able to reach an
15 agreement at the next conference and we agree to exclude any
16 time with respect to the Speedy Trial Act.

17 THE COURT: And is your estimate the same, about 30
18 days?

19 MR. MAZUREK: I think that's right.

20 THE COURT: Ms. Cardi?

21 MS. CARDI: So, Your Honor, I had some serious
22 concerns about the ability of me to adequately communicate
23 with my client. I had serious concerns about his mental
24 health. I submitted an order, a request for Your Honor to
25 sign an order for me to have him examined by Dr. Drob.

1 Unfortunately it got misdirected to a different judge, they
2 used the magistrate clerk's number rather than the criminal
3 number and it went to Judge Pollak. That has now been
4 corrected and I understand it has recently been redirected to
5 Your Honor.

6 THE COURT: I have to tell you I have concerns about
7 any examination done by Dr. Drob and you may want to perhaps
8 have a discussion with the Federal Defenders and their
9 mitigation specialist. So, in a way it's sort of --

10 MS. CARDI: I'm happen to do that.

11 THE COURT: I'm not sure that I would have
12 necessarily granted the application, although I would have
13 granted -- you know, denied it with leave to renew. I'm going
14 to tell you why, I have seen many evaluations done by Dr. Drob
15 and I would guarantee you that if he went around and examined
16 everybody who is here in the courtroom today, everybody
17 suffers from anxiety, PTSD and depression. I have very little
18 confidence in his reports and I just don't find them
19 meaningful.

20 That being said, the Federal Defenders through their
21 mitigation specialists, and they're always happy to help the
22 CJA counsel and any defense counsel who wants a referral
23 obviously, they do have access to some very good mental health
24 experts who I trust can provide a meaningful evaluation. So,
25 you certainly have leave to resubmit that.

1 MS. CARDI: I will be doing that, Your Honor. I
2 appreciate your candor.

3 THE COURT: It's not going to do anybody any good.

4 MS. CARDI: I appreciate that.

5 THE COURT: It's just a waste of CJA funds and time.
6 It's just been my experience now over, I don't know, 14 years
7 of having seen these reports and having seen reports from
8 other experts especially in connection with my reentry court.

9 MS. CARDI: Just so you know, Your Honor, I have
10 never worked with Dr. Drob and he was referred to me by
11 another CJA lawyer.

12 THE COURT: He's been utilized a lot. I think
13 probably Mr. Mazurek may have --

14 MR. MAZUREK: I never did.

15 THE COURT: I know from the time you were on the CJA
16 panel it is entirely possible but at least that's from my
17 perspective, I think that there are probably other mental
18 health experts out there who can provide an evaluation. Even
19 the Federal Defenders have sort of dropped off from using him.

20 MS. CARDI: I will resubmit, Your Honor, thank you.

21 THE COURT: Okay. So, I'll give you time to
22 resubmit that. I will be away on court business this week,
23 although you'll probably need time anyway to reach out to the
24 Federal Defenders.

25 In that regard, I did receive from Probation what

1 purports to be a psychiatric evaluation from LICC which is
2 where I believe he's supposed to be getting mental health
3 treatment. This is even worse than the Dr. Drob report. At
4 least Dr. Drob does a fairly thorough examination, albeit
5 coming to pretty much the same conclusion every time for every
6 person. But I don't know what to make out of this report,
7 quite honestly, and I also have very little confidence as to
8 what kind of mental health treatment the defendant is getting,
9 if at all, from this particular facility. It's all completely
10 self-report. There's no independent testing that was done
11 here. I don't even really know what the conclusion is and I
12 don't know what the qualifications are of any of these people
13 who have written into this report. It doesn't tell me
14 anything different than what I already know. It says that he
15 is on Xanax from his primary care physician but he hasn't
16 provided any kind of documentary proof to Probation as far as
17 I'm aware of any prescription and he says he feels he's in
18 good spirits all things considered. I don't know what that
19 means. But it doesn't report anything other than what we know
20 already and you don't need to be a psychiatrist to know it,
21 it's his own self-report of being depressed and anxious but
22 that doesn't say anything about what's really going on.

23 So, I appreciate that Probation gave us that but it
24 does give perhaps a little bit of a window into what's going
25 on or not going on at this particular facility. So, I gather

1 that you want to have an evaluation done before engaging in
2 any kind of plea discussion with the government.

3 MS. CARDI: I do, Your Honor.

4 THE COURT: I'm just trying to piece the two
5 presentations together.

6 MS. CARDI: I communicated that to Mr. Reilly.

7 THE COURT: Okay. And the government is amenable to
8 holding open any offer pending such an evaluation?

9 MR. REILLY: Yes, Your Honor.

10 THE COURT: Okay. That also brings us to the other
11 issues with Mr. Tepfer which is that -- actually I don't know
12 whether -- perhaps maybe I should just discuss adjournment, I
13 don't know whether Mr. Weisman and Mr. Mazurek necessarily
14 need to be here for that, for the rest of this because it
15 doesn't really concern your client but I can set a date for
16 now, and you'll be asking for an additional 30 days, correct,
17 Ms. Cardi?

18 MS. CARDI: Yes, Your Honor.

19 THE COURT: So, 30 days would take us into Passover.
20 So, I will --

21 MR. MAZUREK: Your Honor, if I may?

22 THE COURT: Yes, Mr. Mazurek.

23 MR. MAZUREK: I have a trial in front of Judge
24 Rakoff in the Southern District beginning on April 16th and
25 Judge Rakoff sits all five days so I believe that -- the trial

1 is not supposed to last more than two weeks so perhaps we
2 could schedule a date for the week of April 29th.

3 THE COURT: The week of April 29th?

4 MR. MAZUREK: Yes.

5 THE COURT: Oh, I'm sorry, you said you're starting
6 April 16th, okay.

7 Is the afternoon better for everybody or is morning
8 okay? It makes a difference because I have the afternoon
9 available May 1st but I have pretty much the whole day
10 available May 2nd, that's a Thursday.

11 MS. CARDI: Your Honor, I'm available both times for
12 you, on Thursday I would be available in the afternoon.

13 THE COURT: On Thursday you would be available in
14 afternoon?

15 MS. CARDI: Yes, on Wednesday right now I'd be
16 available any time.

17 THE COURT: So, any preference, Mr. Mazurek?

18 MR. MAZUREK: No preference, Your Honor.

19 THE COURT: How about you, Mr. Reilly?

20 MR. REILLY: No, Your Honor.

21 THE COURT: Anything from Probation or Pretrial?

22 PROBATION OFFICER: No, Your Honor.

23 THE COURT: How is Wednesday at 2:30?

24 MS. CARDI: That's fine, Your Honor.

25 MR. MAZUREK: That's fine, Your Honor.

1 MR. REILLY: That's fine, Judge.

2 (Pause while the Court confers with the courtroom
3 deputy.)

4 THE COURT: Actually 3:00 might be better, I have a
5 sentencing that might go more than -- you know what, why don't
6 I just play it safe and put it on for Thursday because the
7 sentence could go for much longer.

8 How about -- you said on Thursday you're available
9 in the afternoon, right, Ms. Cardi?

10 MS. CARDI: Yes, Your Honor.

11 THE COURT: Okay. So, how about 2:30 in the
12 afternoon May 2nd?

13 MS. CARDI: That's fine, Your Honor.

14 THE COURT: That's Thursday.

15 MR. MAZUREK: That's fine.

16 MR. REILLY: That's fine, Your Honor.

17 THE COURT: Okay. And did you say, Mr. Mazurek,
18 that your client consents to the exclusion of time?

19 MR. MAZUREK: That's correct, Your Honor.

20 THE COURT: And does your client as well?

21 MS. CARDI: Yes, Your Honor.

22 THE COURT: Okay. An order of excludable delay
23 until May 2nd is entered as to both defendants on consent and
24 also in the interests of justice for all the reasons stated on
25 the record.

1 Anything else, Mr. Mazurek, as to your client?

2 MR. MAZUREK: Nothing, Your Honor.

3 THE COURT: All right, you and Mr. Weissman are
4 excused with the thanks of the Court.

5 MR. MAZUREK: Thank you, Your Honor.

6 (Pause in the proceedings.)

7 (Continued on next page.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 THE COURT: So, as I began to say, I did receive a
2 status conference from both Probation and from Pretrial.
3 Probation's report indicates that Mr. Tepfer just refuses to
4 comply with the electronic monitoring. He doesn't communicate
5 with Probation the way that he has been directed to do so.
6 There was some job interview that allegedly was arranged for
7 him by the Aleph Institute and he just assumes it's the
8 Aleph's responsibility to notify Probation.

9 He's a grown man and he's been on supervision for a
10 long time now and he knows it is his responsibility to report
11 to Probation and to provide documentation.

12 He allegedly went to the hospital he did not provide
13 documentation as requested and he has been admonished now many
14 times that he has to provide it, he knows this and he has not
15 done it.

16 He claims he's prescribed medication by the Long
17 Island Consultation Center, they provided that evaluation that
18 I discussed earlier, but he stops taking it because he claims
19 there are negative side effects.

20 He apparently was offered employment at the place
21 that he had the interview for but he also didn't really
22 provide documentation as requested. He provided a business
23 card. You can pick up a business card anywhere, you can print
24 a business card on any computer, that's not what we mean by
25 documentation, and Probation has documents that they use to

1 verify employment. Independently Probation did verify that he
2 went to the interview but he turned down the job.

3 He claims he's not mentally sound.

4 MS. CARDI: Your Honor --

5 THE COURT: You know, the problem with Mr. Tepfer is
6 that he's a manipulator and I wouldn't be surprised if he's
7 actually -- this is why I do think it is good idea to have a
8 really good evaluation done because I think he's malingering.
9 New charges aside, his prior conviction is for fraud. He is a
10 fraudster, that's what he does. And a grand jury of this
11 district has found that there is probable cause to believe
12 that on top of that, he's committed extortion in essence to
13 defraud the Court by extorting money to pay restitution that
14 he owes on the original fraud that he committed, over
15 \$7 million, and he refuses to comply with the electronic
16 monitoring and on March 12th he apparently was yelling to
17 Probation when he got contacted about his failure to comply,
18 he said, "I don't care, I'm having a breakdown, you can throw
19 me in jail, I don't care, let the judge throw me in jail, I
20 might go check myself into the hospital, just throw me in
21 jail." So, maybe I should accommodate him and we can have him
22 evaluated from jail.

23 And then he proceeded to just walk in and out of his
24 apartment as he pleases. He's got no stable home, he's moving
25 around from place to place and he's doing absolutely nothing

1 to help himself here. He is not a stupid man. The fraud that
2 he engaged in in his original conviction was a rather
3 complicated fraud and the instant case is rather
4 sophisticated. And at this point he's not made any kind of
5 restitution at all, it's over \$12 million of restitution. He
6 hasn't even made one percent of that, and I honestly don't
7 even know what benefit, if any, he's getting from his
8 consultations at LICC.

9 He hasn't fared much better with Pretrial. He
10 failed to report to Pretrial as directed a couple of times
11 right after a status conference here where he was specifically
12 directed to report to Pretrial and he didn't go and he claims
13 he forgot to report because he was having a hard time and,
14 again, he's always attributing it to some mental breakdown
15 about the current case.

16 He failed to report his change of address. Pretrial
17 found out because, guess what, Probation and Pretrial are
18 talking. Both Pretrial and Probation are recommending that
19 Mr. Tepfer's bail be revoked.

20 So, at this point I will hear from the government
21 and then, Ms. Cardi, I'll give you an opportunity to respond
22 to everything I've said. If there's anything that Probation
23 or Pretrial would like to add, I'll have them say that first
24 so that you can respond, Ms. Cardi.

25 MS. CARDI: Thank you.

1 MR. REILLY: Your Honor, the government is
2 supportive of the recommendation of Pretrial and Probation.
3 I recall I think in one of our first appearances that the
4 government had referenced or discussed with the Court the
5 nature of the noncompliance. I think I used the phrase that
6 these were technical pieces of noncompliance and the Court
7 correctly said, listen, you comply or you're not, technical as
8 it is, that's not a real term but more to the point here I
9 think is that there has been repeated chances, meaning again
10 when this case was initiated the issue of compliance in terms
11 of reporting, whether it be job search activity or compliance
12 ultimately as time went on with the location monitoring, these
13 have been repeated problems and despite the fact that Pretrial
14 and Probation have been patient and endeavored to make efforts
15 to ensure compliance and have not made a knee jerk request to
16 the Court for obviously the more significant step of seeking
17 remand, the problems haven't resolved themselves and it's not
18 simply, well, you know, effort has greatly improved save for
19 this one instance, it's repeated and, in fact, there seems to
20 be a brazenness about it now, well, fine, put me in jail if
21 that's what we should do and so, even with respect to the
22 notion of an evaluation which I think the parties are in
23 agreement, it sounds like the Court is in agreement is
24 appropriate, I have some concern about his ability to comply
25 with that, maybe not ability but willingness to comply outside

1 of a secure setting.

2 So, for those reasons the government joins in the
3 recommendations of the Probation Department and Pretrial
4 Services.

5 THE COURT: Is there anything that Probation or
6 Pretrial would like to add?

7 PROBATION OFFICER: No, Your Honor, that pretty much
8 sums it up and it is Probation's position on the matter. I
9 would like to note that since March 1st when Mr. Tepfer had
10 screamed about throwing him in jail, so on and so forth, he
11 has not been on the location monitoring system and has not
12 been monitored.

13 THE COURT: And for Pretrial?

14 PRETRIAL SERVICES OFFICER: Judge, we just want to
15 add that for the technical violations -- well, violations,
16 take out the word technical, so usually we exhaust the
17 resources first in Pretrial before we run to Your Honor and
18 advise Your Honor of any noncompliance but Mr. Tepfer has
19 demonstrated that he's not capable of complying on
20 supervision, he's on post-conviction supervision and pretrial
21 supervision and he's demonstrated that he's not willing to
22 cooperate. So, for the reasons that Your Honor said before
23 and the government and Probation, we reiterate our
24 recommendation in our report that his bail be revoked.

25 THE COURT: Ms. Cardi?

1 MS. CARDI: So, Your Honor, I have present in court
2 today Ms. Honey Vogel who is a representative from Aleph.
3 When Mr. Tepfer had what I would describe for the Court as a
4 breakdown at the rooming house, so the place where he was
5 living, he was no longer able to live there. He's since been
6 residing at O EI which is a Jewish organization that has taken
7 him in so that he's not homeless. I do think, and Ms. Vogel
8 is here to address Your Honor if necessary, she's advised me
9 that she would like the opportunity to work with him in order
10 to get him connected with a mental health program that would
11 work. She described it as -- and she could describe it for
12 you but she described it to me as a shock which essentially is
13 getting Mr. Tepfer to work with a psychiatrist or psychologist
14 that he can honestly communicate with. His behavior has
15 been --

16 THE COURT: In the first place, that's not how we
17 work, okay. We have to deal with contracted health providers,
18 okay, people that have been vetted either through Pretrial
19 Services -- whether we do it through Pretrial or we do it
20 through Probation. Considering that he is homeless, I don't
21 even know, does he have Medicaid?

22 MS. CARDI: I don't think so, Your Honor.

23 THE COURT: He doesn't even have Medicaid?

24 Ms. Aucoin, do you know whether he has Medicaid?

25 PROBATION OFFICER: He previously told me that he

1 did renew his Medicaid so I believe him to have it.

2 MS. CARDI: He has Fidelis Care. I'm not sure
3 whether it is through Medicaid or not.

4 THE COURT: I don't know, I think they do use
5 different health care providers to provide -- but regardless,
6 because we have to have a certain level of accountability from
7 the program and unless it is a provider that has been vetted
8 through either Probation or Pretrial, we cannot be assured
9 that we are actually going to have the level of accountability
10 that we require.

11 MS. CARDI: So, Your Honor, as I understand it,
12 Aleph and Ms. Vogel has advised me that Aleph has worked
13 closely with Probation and Pretrial in this courthouse and she
14 is familiar with the head of I believe -- is it Probation or
15 Pretrial, Ms. Vogel?

16 MS. VOGEL: (From the gallery) Both.

17 MS. CARDI: So, that they are now -- the
18 organization of Aleph is apparently known to Probation and
19 Pretrial.

20 THE COURT: I'm also aware of Aleph, I'm very much
21 aware of Aleph, that's not the point.

22 MS. CARDI: Okay.

23 THE COURT: That's not the point. The point is that
24 he needs to work with a contracted mental health provider that
25 has already been certified as approved by Probation or

1 Pretrial who are both arms of the Court.

2 MS. CARDI: So, because of the prior relationship
3 Aleph has with Probation and Pretrial, I believe that their
4 services have been used in such a capacity with the Court on
5 other cases so there may be a synergy and a relationship
6 whereby Pretrial --

7 THE COURT: But Aleph has been working with him
8 already for a few months and nothing has happened.

9 MS. CARDI: Your Honor --

10 THE COURT: Nothing has happened. We're talking now
11 for at least two months, probably more than that because in
12 February they managed to get him, commendably, a job interview
13 and he was offered a job and he just thumbs his nose up at it
14 because the bottom line is he doesn't want to make
15 restitution. This has been a struggle from day one since he
16 has been on supervised release in his 10-CR-600 case, a case
17 that's eight years old. This is a constant. He's 55-year old
18 man, he's been relying on his mother to support him. He's
19 relying on other people to do for him.

20 That still doesn't address the fact that he's been
21 noncompliant with the reporting requirements for both
22 Probation and Pretrial and when I have both Probation and
23 Pretrial, both agencies of this Court that are known
24 nationally for their therapeutic approach to supervision and,
25 as Mr. Atkinson says, Pretrial, and I know Probation does as

1 well, try to exhaust every single possibility to work with
2 people and if they're at the point of throwing up their hands,
3 I don't know what else we can do because he is not amenable to
4 supervision.

5 Does he even have a cell phone?

6 PROBATION OFFICER: Yes, he does, Your Honor.

7 THE COURT: He does have a cell phone. I don't see
8 how you address that. He hasn't been compliant with
9 electronic monitoring, he doesn't care, he wants to go to
10 jail, that's what he said.

11 MS. CARDI: Your Honor, I believe that his mental
12 health issues predate this case and have never really been
13 properly addressed by Mr. Tepfer and the family but I do think
14 that they exist and I do think that in part the inability that
15 he has to comply as he, of course, should may be symptomatic
16 of the mental health issues that he has and that's why I would
17 like another opportunity to see if I can put together
18 something that has him reporting as required and also
19 receiving the kind of mental health and community support with
20 the approval of Probation and Pretrial.

21 THE COURT: I know that you are not his original
22 attorney in the 2010 case but rest assured, I would not have
23 ordered as part of the original sentence -- and he was given a
24 sentence of five years of Probation, he wasn't given a jail
25 sentence, I could have sent him to jail, but as part of a

1 special condition of supervised release he was ordered to
2 mental health treatment. He has not cooperated with Probation
3 in that regard and so what we have now is a situation that has
4 escalated because not only has he not really complied with the
5 conditions of supervision that were originally imposed with
6 respect to mental health, with respect to employment, with
7 respect to making restitution, his reporting has always been
8 spotty with Probation, he's always got an excuse for
9 something, and we have new escalation where the violation of
10 supervised release is the commission of another felony.

11 What am I supposed to wait for, for him -- he's had
12 angry outbursts, throwing furniture and stuff around in the
13 apartment; what am I supposed to do, wait until he hurts
14 somebody or himself. I don't know that he's being truthful to
15 anybody.

16 MS. CARDI: Well, Your Honor, I'd like one more
17 opportunity to see if I can work with this client and with
18 Probation and Pretrial and Aleph to get him back on the right
19 track.

20 THE COURT: Back on what right track? He has never
21 been on the right track.

22 MS. CARDI: So --

23 THE COURT: He has never been on the right track.

24 MS. CARDI: I have some faith that the providers
25 that Aleph can connect us with will hopefully be able to --

1 THE COURT: What makes them different? What makes
2 them different?

3 MS. CARDI: I guess one of the differences is that
4 they're very familiar with the community from which Mr. Tepfer
5 comes from and some of the issues that are endemic in the
6 community in terms of mental health and familial issues but I
7 just think that if I could have one more opportunity to work
8 with him and see whether or not I can assist him in doing what
9 he needs to do going forward in this case, I know I have the
10 support of his family who are in court today, I know they're
11 very concerned about him, they're very responsive to me when I
12 need them, and an opportunity to see whether or not we can
13 assist Mr. Tepfer. In the meantime I can also determine what
14 I believe the real mental health issues are and listen, Your
15 Honor, you may be right, I may be wrong, Mr. Tepfer may in
16 fact be a malingerer, I don't think he is but I'm not a
17 psychologist. I do know that I have significant concerns
18 about his mental health when I communicate with him.

19 THE COURT: According to this alleged psych report,
20 it says that he's been separated, this is from his wife; he
21 has four children, all adults, the youngest is 21, and he is
22 estranged from three of his four children for at least the
23 past three years.

24 MS. CARDI: I think that kind of estrangement and
25 the separation from his family is symptomatic of some of the

1 mental health issues that he experiences. I know how
2 difficult it is to deal with individuals who do suffer from
3 mental health issues, they're not always the easiest to work
4 with nor are they necessarily amenable at times but I do think
5 he has a supportive network here who want to give him the
6 opportunity.

7 THE COURT: So, I'm going back to the docket on
8 10-CR-600 to a report from Pretrial Services dated June 22 of
9 2012 where Pretrial Services requested that the Court modify
10 the bond conditions to include mental health treatment. So,
11 you know this has been dealt with for more than six years now
12 and, in fact, it was based on at least six months of
13 discussions and observations between Pretrial and the
14 defendant and it's more of the same, he's got stress because
15 of the initial arrest, he hasn't gotten employment because of
16 his personal and family issues, he can't handle employment, he
17 would prefer to attend counseling with a prominent rabbi in
18 the orthodox Jewish community because of his issues of a
19 religious nature and so on. And to boot, and the reason why
20 this was ongoing for six months culminating in Pretrial
21 Services making an application to the Court was that nothing
22 came of it. He's been given this opportunity to get his own
23 special mental health specialist and, of course, I did in fact
24 order it, I granted that application.

25 I really don't know how much more we're going to put

1 up with Mr. Tepfer's lack of compliance, I just don't
2 understand how much more are we supposed to go on with this.
3 It's a complete lack of respect for the Court and the rules of
4 the Court and the fact that he's on supervision and that he's
5 got a prior felony conviction and he can go to jail for the
6 violation and, frankly, a finding of probable cause is enough
7 for this Court to find that there has been a violation, I
8 don't need to wait for a conviction in this case, in the new
9 case.

10 Defendant is remanded. I'm not persuaded that he is
11 going to do anything different than what has been going on now
12 for more than six years.

13 And then once you've made the application for the
14 specialist, the psychiatrist to evaluate him, he'll need an
15 order to permit him to enter MDC.

16 MS. CARDI: Yes, thank you, Your Honor.

17 (Pause.)

18 MS. CARDI: Your Honor, Ms. Vogel has asked if she
19 could address the Court?

20 THE COURT: No.

21 MS. CARDI: Your Honor, if you could put a notation
22 on there for immediate medical attention, he is on a series of
23 medications for high blood pressure.

24 THE COURT: Do you have verification of any
25 medications because I haven't seen anything anywhere?

1 PROBATION OFFICER: He showed me one prescription
2 bottle but it's hard to get a definitive answer, proof of what
3 exactly he's on right now.

4 THE COURT: Had he complied with what he's supposed
5 to do, that when he's on medication he provide proof of that
6 to Probation, we would have a record of this.

7 (Pause.)

8 MS. CARDI: Well, I will just say for the record so
9 that it can be -- it's high blood pressure, cholesterol,
10 sugar, I don't know if he's actually diagnosed a diabetic.

11 (Pause.)

12 MS. CARDI: He advises me that he takes 2,500
13 milligrams a day of metformin.

14 (Pause.)

15 THE COURT: Ms. Cardi, I did mark the detention
16 order of medical attention requested.

17 MS. CARDI: Thank you, Your Honor.

18 THE COURT: Thank you.

19 MR. REILLY: Thank you, Your Honor.

20 PROBATION OFFICER: Thank you, Judge.

21 (Time noted: 4:10 p.m.)

22 (End of proceedings.)

23

24

25